84-927 (1)

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ALEXANDER L. STEVAS,
CLERK

No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

FRANCOISE GEORGE
Petitioner

vs.

CARL GEORGE
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Francoise George
c/o D. C. George
822 South Lee Street
Alexandria, Virginia 22314

Pro-se

76 pp

QUESTIONS PRESENTED FOR REVIEW

Whether the summary denial by the District of Columbia Court of Appeals of Petitioner's request for Rehearing of the Judgement of the Superior Court of the District of Columbia, constitutes a violation of Petitioner's rights under the Constitution of the United States of America.

Whether the rights under the Constitution of the United States of America apply to Petitioner and others in a similiar situation.

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CONSTITUTIONAL PROVISIONS INVOLVED

Article III - Sec. 2 -

A special civil rights statute permits removal of any civil action . . . by a defendant who is denied or cannot enforce in the state court a right under law providing for equal civil rights of persons or who is being proceeded against for any act under color of authority derived from any law providing for equal rights. 28 USC 1443.

Recently the Court has formulated a two-pronged standing test: if the litigant (1) has suffered injury in fact and if he (2) shows that the interest he seeks to protect is arguably within the zone of interests to be protected or regulated by the statuatory question, he has standing. D397 U.S. 150 (1970).

The Injury Requirement

"A person suffering legal wrong because of (agency) action, or adversely affected by (agency) action within

the meaning of a relevant statute, is entitled to judicial review thereof.

The Requirement of a Real Interest "It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute that its validity may be called in question by a suitor and determined by the exertion of judicial power."

Fifth Amendment

Right to life, liberty and property.

Right to just compensation.

Fourteenth Amendment

Right to equal protection under the law.

Right to due process of the law.

Substantive due process:

Justice Harlan observed . . . that . . . due process "in the consistent view of this Court has ever been a broader concept . . . Were due process merely a procedural safeguard it would fail to reach those situations where the deprivation of life, liberty or property was accomplished by legislation which, by operating in the future could, given even the fairest possible procedure in application to individuals, nevertheless destroy the enjoyment of all three . . . thus the guarantees of due process . . . have in this country 'become bulwarks also against arbitrary legislation'."

NO.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

FRANCOISE GEORGE

Petitioner

vs.

CARL GEORGE

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, FRANCOISE GEORGE, respectfully urges that a writ of certiorari issue to review the District of Columbia Court of Appeals' denial of Petitioner's request for Rehearing rendered in Order dated 11 July, 1984 and Order dated 6 August, 1984.

OPINION BELOW

APPENDIX I - A-1

Order, District of Columbia

Court of Appeals

dated 11 July, 1984

APPENDIX II - A-2

Order, District of Columbia

Court of Appeals

dated 6 August, 1984

APPENDIX III - A-3 - 8

Plaintiff's Civil Appeal Statement

and Notice of Appeal

dated 14 March, 1984

APPENDIX IV - A-9 - 20

Plaintiff's Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgement.

and Memorandum of Points and Authorities in Support

of Plaintiff's Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgement.

dated 30 January, 1984

APPENDIX V - A-21 - 30

Defendant's Opposition to Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgement.

dated 9 February, 1984

APPENDIX VI - A-31 - 34

Plaintiff's Reply Memorandum in Support of Her Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgement.

dated 16 February, 1984

APPENDIX VII - A-35

Order - Superior Court

dated 15 February, 1984

APPENDIX VIII - A-36 - 38

Quotations from Judgement

APPENDIX IX - A-39 - 40

Quotations from "Women and Divorce" - New York Magazine - dated 8 October, 1984

JURISDICTION

Jurisdiction of this Court is invoked under Article III, - Sec. 2 - because the relief sought is not available in any other court: the District of Columbia Court of Appeals answers only to the Supreme Court of the United States;

the injury requirement exists;

the requirement of a real interest exists.

Jurisdication of this Court is also invoked under the Fifth and Fourteenth Amendments.

STATEMENT OF THE CASE

Petitioner, Respondent's abandoned wife, but still, under Respondent's management by mutual consent, his full worldwide investment partner of 37 years,

a) filed, on her counsel's advice, a case for legal separation in the Domestic Branch of the Superior Court of the District of Columbia

b) sought from the court the completion of equal division of the parties' property in accordance with their long-standing partnership agreement as expressed in Respondent's verbal and written commitments to the Petitioner

c) Finding a mutually acceptable mode of protection for Petitioner's rights under the above understanding and commitments being the only obstacle to a separation

agreement between the parties, and Respondent having subjected these rights to abuse and duress, Petitioner sought from the court, protection from further abuse, in the context of the flexibility and tenets of international business.

Respondent counterclaimed for absolute divorce.

Inexplicably there followed a lengthy, confused trial.

Basing his opinion, whether by negligence, confusion, or intent on Findings of Fact which owe more to the Respondent's counsel's Findings of Fact than to the precise and complete facts as reported in the transcripts and exhibits of the case, Judge Mencher, via omissions, contradictions, presumptions and multiple errors and miscalculations (all of these deletorious to Petitioner and incompatible with due process) entered, on 18 January, 1984, Findings of Fact and Conclusions of Law and Judgement of Absolute Divorce.

Relief granted:

a) absolute divorce

b) division of property (undervalued in Judge Mencher's recognition)

c) Disproportionate and inadequate protection (which Respondent is even now seeking to further reduce) suborned to Respondent's lifespan, personal tax strategy and uncheckable control .

Relief denied:

a) completion of the division of property according to the parties' long-standing partnership agreement as expressed in Respondent's verbal and written commitments to Petitioner

b) sufficient and adequate protection, mutually acceptable to the parties, in the context of the flexibility and tenets of international business

Although Petitioner's counsel asserted that the above Judgement was arbitrary, capricious and without due

process of the law, he had made other commitments in the Caribbean and, time being of the essence, Petitioner sought other counsel on whose advice

on 1 February, 1984 she filed in the Superior Court of the District of Columbia a Motion to Amend and Make Additional Findings, or in the Alternative, to Amend Judgement, and Motion to Stay Execution pending resolution of her other Motion. Both Motions were denied by Orders entered on 1 February, 1984.

On 14 March, 1984, she filed a Motion of Appeal in the District of Columbia Court of Appeals requesting Rehearing. This request was denied by Order, entered 11 July, 1984, and Order, entered 6 August, 1984.

REASONS FOR GRANTING
THE WRIT OF CERTIORARI

It is the Petitioner's position that the District of Columbia Court of Appeals erred in summarily denying Petitioner's request for Rehearing of the Judgement of the Superior Court of the District of Columbia.

Petitioner has a right to a proper hearing of her Appeal

The Court of Appeals overruled Petitioner's request for Rehearing with no Opinion, in a one sentence order.

". . . If a statute creates a presumption that is arbitrary or if it operates to deny a fair opportunity to rebut it, due process is denied." (14th Amendment)

The Superior Court of the District of Columbia's Findings of Fact were based in part on presumptions harmful to the Petitioner.

"An existing right of action to recover damages for an injury is property which no legislation has the power to destroy." (Art I - Sec 10)

Despite Judge Mencher's Opinion to the contrary, Petitioner's right to protection from duress is not eclipsed by the fact that she is not starving, Judgement P.35 (8)[1] and her right to protect her shareholders' rights in court from Respondent's injurious actions is not extinguished merely because she is a spouse. Judgement P.30 (2c)[2] Appendix VIII.

Petitioner's right to life, liberty and property are not subject to any other person's lifespan, personal tax strategy and uncheckable control. Appendix IX

According to a study published by the New Jersey Supreme Court,[3] an investigation by a panel appointed by Chief Judge Lawrence Cooke of New York,[4] and Judith Avner of the NOW Legal Defense and Education

Fund [5] and the National Advisory Council on Economic Opportunity to President Reagan,[6] such discrimination is rampant. Appendix IX.

For the foregoing reasons, it is submitted that a Writ of Certiorari should be issued to review the 11 July, 1984 and the 6 August, 1984, decisions of the District of Columbia Court of Appeals.

Respectfully submitted,

FRANCOISE GEORGE

By: Francoise George

FRANCOISE GEORGE

Pro-se

CERTIFICATE OF SERVICE

I, Francoise George herein state that I have caused to be deposited in the United States Mail, postage pre-paid, a true and correct copy of the foregoing Petition for Writ of Certiorari, to William B. Wolf, Jr., attorney for the Respondent at his mailing address of 1001 Connecticut Avenue, N.W., Washington, D.C., 20036 on this 4 day of December, 1984.

By: Francoise George

FRANCOISE GEORGE

Pro-se

APPENDIX

APPENDIX I

FILED July 11, 1984

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001
(202) 638-7113

No. 84-338
FRANCOISE GEORGE, Appellant,

v. D1068-82

CARL GEORGE, Appellee.

BEFORE: Ferren and Rogers, Associate Judges.

ORDER

On consideration of appellee's motion for partial summary affirmance of judgement of absolute divorce, appellant's opposition, appellee's reply thereto, appellee's motion to dismiss appeal, appellant's opposition, appellee's reply thereto, appellee's motion for leave to supplement reply, and the record on appeal herein, it is

ORDERED that appellee's motion to dismiss be granted and that this appeal is hereby dismissed.

PER CURIAM

Honorable Bruce S. Mencher

Clerk, Supior Court

Lawerence H. Wechsler, Esq.
1801 K Street N.W. #1101
Washington, D.C. 20006

William B. Wolfe, Jr. Esq.
1001 Connecticut Avenue N.W. #1210
Washington, D.C. 20036

APPENDIX II

FILED AUGUST 6, 1984

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001
(202) 638-7113

No. 84-338
FRANCOISE GEORGE, Appellant,

v. D1068-82

CARL GEORGE, Appellee.

BEFORE: Ferren and Rogers, Associate Judges.

ORDER

On consideration of appellee's motion to reconsider dismissal of appeal and of appellee's opposition thereto, it is

ORDERED that appellant's motion is denied.

PER CURIAM

Honorable Bruce S. Mencher

Clerk, Supior Court

Lawerence H. Wechsler, Esq.
1801 K Street N.W. #1101
Washington, D.C. 20006

William B. Wolfe, Jr. Esq.
1001 Connecticut Avenue N.W. #1210
Washington, D.C. 20036

APPENDIX III

DISTRICT OF COLUMBIA COURT OF APPEALS

Francoise George,	)	
	)	
Appellant,	)	
	)	
V.	)	Docket No._____
	)	
Carl George,	)	
	)	
Appellee.	)	
	)	

CIVIL APPEAL STATEMENT

This Civil Appeal Statement is filed on behalf of the Appellant, Francoise George.

(1) Nature of Case. Appellant, Francoise George, plaintiff below, filed a case for legal separation in the Domestic Relations Branch of the Superior Court, and sought a division of marital property.

Her husband, Carl George, counterclaimed for absolute divorce. On January 20, 1984, the Honorable Bruce S. Mencher granted an absolute divorce, and entered Findings of Fact, Conclusions of Law and a Judgment of Absolute Divorce dividing the marital property.

(2) Method of Disposition in Trial Tribunal. The case was decided by trial before Judge Mencher without a jury.

(3) Relief Denied by Trial Tribunal. The Court granted an absolute divorce and divided the marital property.

(4) Relief Granted by Trial Tribunal. Plaintiff's claim for equitable distribution of the property, and for a post-trial hearing.

(5) Date of Decision. Judgment was entered on January 20, 1984.

(6) Post Decision Motions. On February 1, 1984, plaintiff filed a Motion to Amend and Make Additional Findings, or, in the Alternative, to Amend Judgment, and a Motion to Stay Execution of the Judgment pending resolution of plaintiff's other Motion. Both Motions were denied by Orders entered February 21, 1984.

(7) Notice of Appeal. Notice of Appeal was filed March 14, 1984.

(8) Counsel.

For Appellant: Lawrence H. Wechsler, Esquire
Janis, Schuelke & Wechsler
Suite 1101
1801 K Street, N.W.
Washington, D.C. 20006
Tel: 202/861-0600

For Appellee: William B. Wolf, Jr., Esquire
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036
Tel: 202/296-3300

(9) Certificate of Counsel.

I, Lawrence H. Wechsler, as counsel for the Appellant, certify that this appeal is taken in good faith, and not for the purpose of delay. Appellant is prepared immediately to take all steps to complete the appeal.

(10) Issure Presented for Review.

A. Whether, Given the trial judge's recognition that WEBCO corporate stock represented the large majority of the marital assets, and that he lacked sufficient evidence as to its value, the trial judge abused his discretion in denying plaintiff's post-trial Motion to offer such evidence to the court.

B. Whether on the basis of the evidence presented at trial, the marital property was properly valued by the Court.

C. Whether the marital property was distributed "in a manner that is equitable, just and reasonable" as required by D.C. Code § 16-910(b) (1981).

D. Whether pendente lite support was properly denied.

(11) Relief Sought. The Appellant seeks to have the Judgment distributing the marital property vacated, and the case remanded to the Domestic Relations Branch for receipt of evidence on the value of the jointly held stock, and redistribution of the marital assets in an equitable fashion, and reversal of the pendente lite support decision.

Date: March 29, 1984 Respectfully Submitted,

JANIS, SCHUELKE & WECHSLER

Lawrence H. Wechsler, Esq.
D.C. Bar No. 102418
Suite 1101
1801 K Street, N.W.
Washington, D.C. 20006
(202) 861-0600
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, this 29th day of March, 1984, a copy of the foregoing Civil Appeal Statement to William B. Wolf, Jr., Esq., 1001 Connecticut Avenue, N.W., Washington, D.C. 20036. Counsel for Appellee.

_____

Randall H. Bryant II

BEST AVAILABLE COPY

A-10

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
NOTICE OF APPEAL

Francoise Georgne

Vs.

Docket Number D 1068-82

Carl Georgne

A Notice is hereby given that Francoise Georgne appeals to the District of Columbia Court of Appeals from the (judgment) ~~(order)~~ of the Family Division Division of this Court entered on the 20th day of Jaunary, 19 84, by the Honorable Bruce Hencher.

Description of judgment or order: final judgment of divorce

Issues to be presented by appellant on appeal: division of property not in accordance with law

B ☐ Jury Trial ☒ Trial by Court ☐ Other C ☐ Contract ☐ Tort ☒ Other

D Defendant's address: Alexandria, Virginia

Current Status: ☐ On Bond ☐ Confined at: n/a

Convictions:

☐ Juvenile ☐ Felony ☐ Misdemeanor ☐ Traffic ☐ District of Columbia

Names(s) of Co-defendant(s):

E State the dates and portions on the transcript needed on appeal. (Unless specifically requested here, no portions(s) of the transcript will be provided)

☐ In Forma Pauperis ☐ C J A ☐ Paid

DATES	PORTIONS OF TRANSCRIPT REQUESTED	COURT REPORTER

F Names and addresses of parties or attorneys to be served:

NAME	ADDRESS
William B. Wolf, Esquire	1001 Connecticut Ave., N.W., Washington, D.C. 20036

G Notice of Appeal filed by:

☐ Atty. for Govt. ☐ Defendant ☒ Plaintiff ☐ Defendant Pro-Se

Lawrence H. Wechsler, Esq.
Printed Name of Atty. for Appellant

Lawrence H. Wechsler
Signature of Atty. for Appellant

Address: Suite 1101, 1801 K Street, N.W. Washington, D.C. 20006

Unified Bar No. 102418 Telephone No. (202) 861-0600

APPENDIX IV

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FRANCOISE DU PAC DE MARSOULIES GEORGE,	)	
Plaintiff	)	
V.	)	Civil Action No. D 1068-82
CARL HEYMAR GEORGE,	)	
Defendant.	)	

MOTION TO AMEND AND MAKE ADDITIONAL FINDINGS OR, IN THE ALTERNATIVE, TO AMEND JUDGMENT

The Plaintiff, by and through the undersigned counsel, respectfully moves this Court to amend its findings of fact and to Order a hearing to make additional findings of fact, pursuant to Rules 52(b) and 59(a) of the Domestic Relations Rules of this Court. In the alternative, Plaintiff respectfully moves this Court, pursuant to Rule 59(e) of the Domestic Relations Rules of this Court, to amend the Judgment entered in this case on January 20, 1984.

As grounds therefore, Plaintiff states:

1. The value of the Webco Companies as found by the Court (FINDINGS OF FACT, D. Valuation and distributiion of the stock in all the Webco companies, (no. 1, at 29) is significantly understated and based on insufficient evidence.

2. Additional evidence need be presented in order to allow this Court to properly and equitably determine the value of said Companies.

3. Additional evidence need be presented in order to allow this Court to determine the reduced value of the $430,000 award as Plaintiff's share of the Webco Companies, since this amount will be distributed over six years, instead of in one lump sum, and this will deprive the Plaintiff of opportunities for present use of the funds.

4. If this Court declines to amend its findings and make additional findings, the Judgment in this case should be amended as follows:

a. The net value of the George family holdings in the Webco group should be $6,992,000, instead of $1,464.451. (Judgment 1, at 29; ¶ 9, at 36.)

b. Mrs. George should receive $3,193,774.50, 50 per cent of the increase in the fair market value of the Companies over the prior estimate of $1,464,451 (plus the $430.000) as a fair and equitable distribution of her interest in this property. (Judgment ¶ 9, at 36; ¶ 3 m) at 43.)

c. The amount to be distributed to Mrs. George as a fair and equitable distribution of her interest in the Webco Companies (whether $3,193,774.50 or $430,000) should be increased by a fair per centage to recompense Mrs. George for lost value of the distrubution through lost investment and purchase opportunities (over and above upward adjustment for inflation, as already provided by this Court), since the distribution will occur over an extended period of time. (Judgment ¶ 9, at 36, and note 12 ¶ 3 m) at 43.

This motion is supported by a Memorandum of Points and Authorities appended hereto.

Dated: January 30, 1984

Washington, D.C.

Respectfully submitted,

Janis, Schuelke & Wechsler

Lawrence H. Wechsler, Esq.
D.C. Bar No 102418
1801 K Street, N.W.
Washington, D.C. 20006
(202) 861-0600
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, this 30th day of January, 1984, a copy of the foregoing Motion to Amend and Make Additional Findings or, In the Alternative, to Amend Judgment and Memorandum in Support thereof, to William B. Wolf, Jr., Esq., 1001 Connecticut Ave., N.W., Washington, D.C. 20036.

Randall H. Bryant II

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division
Domestic Relations Branch

FRANCOISE DU PAC DE MARSOULIES GEORGE,	)	
Plaintiff	)	
V.	)	Civil Action No. D 1068-82
CARL HEYMAR GEORGE,	)	
Defendant.	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND AND MAKE ADDITIONAL FINDINGS OR, IN THE ALTERNATIVE, TO AMEND JUDGMENT

Introduction

A Judgment of Absolute Divorce in this suit was entered by this Court on January 20, 1984. Pursuant to Rules 52(b) and 59(a) of the Domestic Relations Rules of this Court, Plaintiff now respectfully moves, within ten

days of entry of said Judgment, that this Court take additional testimony regarding the value of the Webco Companies' stock, and make new findings of fact and conclusions of law, and to direct the entry of a new judgment as appropriate. In the alternative, Plaintiff moves this Court, pursuant to Rule 59(e), to amend the Judgment entered in this suit, as is more fully explained below.

I. Value of Webco Companies

The primary financial asset of this marriage of 37 years is the ownership of the Webco group of Companies. This Court has determined that the Plaintiff, Mrs. George, shall transfer her ownership of all shares in these Companies to Mr. George. Judgment ¶ 2, at 30; 9, at 35-6; ¶ 4 a) at 44-5. In exchange, Mr. George is to pay his wife approximately 30 per cent of the fair market value of these Companies as a "fair and equitable

distribution of her interest in this property." Judgment ¶ 9, at 35-6.*

The Court has found that the book value of the Companies is $1,464,451, and has used this sum to determine the fair distribution of the assets between the parties. Judgment ¶ 1, at 29; ¶ 9, at 36; ¶ 3 m), at 43. This evaluation of the Companies is, at best, woefully low, and significantly depresses the rightful equitable share of the Plaintiff, Mrs. George, at this her only opportunity for a full and fair hearing on the value of her 37 year marriage.

Rules 52(b) and 59(a) of the Domestic Relations Rules of this Court codify the inherent power of this

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* However the Defendant concedes, and this Court apparently has accepted, that Mrs. George is the beneficial owner of 50 percent of these Companies, Judgment 60, at 14; note 11, at 36.

Court, in its sound discretion and in the interests of equity, to "amend the judgment accordingly", and to ". . . open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." See generally, 5A Moore's Federal Practice ¶ 52.11 (2d ed. 1982); 6A Moore's Federal Practice ¶ 59.07 (2d ed. 1983) (discussing comparable Federal Rules of Civil Procedure). Plaintiff requests this Court to exercise its power and discretion to do so.

In its judgment, this Court has expressed its desire and intention to adhere to the letter and spirit of D.C. Code § 16-910 9b0-- to distribute property accumulated during marriage " in a manner that is equitable, just and reasonable . . . ." The severe under-valuation of the Webco Companies violates that principle and will deprive Mrs. George of her rightful and equitable share of this marriage.

While it is clear that the Court attempted to determine the fair market value of the Webco holdings, it was frustrated in its efforts to do so by the failure of Plaintiff's counsel at trial to introduce evidence relevant to this issue.

The "fair market value" of a company is a theoretical term which is easy to understand, but frequently very difficult to determine. It may be defined, for example, as in the Tax Regulation, as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts." 26 C.F.R.§ 20.2031-(b)(1983). Revenue Ruling 59-60 describes the factors to be used in evaluating the worth of stock of a closely held corporation for federal tax purposes, and it emphasizes the need to consider all available financial

data, and lists numerous factors to be considered (of which book value is only one). 1959-1 C.C. 237. A Significant point not to be forgotten is that the true or "fair market" value of a company rests in future earnings of a company, and not in past financial investment (except insofar as assets may be liquidated). Economic value is a present and future consideration, not an accounting of past expenses. Therefore, book value or net worth is merely an accountant's historical perspective of corporate assets over and above liabilities, which takes no account of the value of a "going concern", and consequently is frequently an inadequate measure of a company's value.

This Court itself has candidly admitted that it received no assistance as to the value of the Companies' "good will", one significant factor in evaluating a going concern. Plaintiff now seeks the opportunity to redress this failure at trial, and accordingly requests a hearing for the limited purpose of presenting expert testimony

which will enable this Court to make an informed judgment as to the fair market value of these Companies. It is only if the Court receives such evidence that it will be able to distribute marital assets in a truly equitable fashion, as it has expressed its desire to do.

Mrs. George's situation is somewhat analogous to that of the plaintiffs in du Pont v. United States, 385 F. 2d 780 (3d Cir. 1967). The Court of Appeals for the Third Circuit held that the District Court improperly denied plaintiffs' motion to open its judgment and amend its findings of fact, or grant a partial new trial, under Federal Rules 52(b) and 59(a), where plaintiffs had brought an action for a tax refund from the I.R.S. over the disputed fair market value of ocean front property damaged in a storm. Both plaintiffs and the government had produced expert witnesses as to the fair market value of the property. The District Court rejected the testimony of the plaintiffs' expert, post-trial, on the

grounds that it was based on a false assumption about the property. The Court found that plaintiffs had suffered a greater loss than the I.R.S. allowed, but since it had no evidence before it of the fair market value of the property (the Court having, post-trial, rejected the plaintiffs' evidence as irrelevant), and the burden having been on the plaintiffs, the District Court dismissed plaintiffs' action. When plaintiffs discovered what the Court had done, they moved for an opportunity to supply the deficiency in evidence, which the Court improperly denied.

Similarly here, Mrs. George's counsel at trial, for whatever reason, chose not to introduce evidence, or at least, sufficient evidence, on the value of the Webco Companies. We seek to supply that deficiency. Plaintiff was unaware of the effect of her counsel's "tactical decision" or failure to produce such evidence until after

trial, and it would be manifestly unfair for her to be prevented from producing for this Court the evidence that the Court itself has declared to be significant.

Consequently, in keeping with the Court's desire to fairly and equitably distribute the assets of this marriage, Plaintiff requests the opportunity to present evidence at a hearing as to the value of the Companies, and thus enable the Court to more accurately achieve its aim.*

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* This Court has already received evidence of a sale of 50 per cent of the Companies a mere two and one-half years ago, and declined to use this value as a base for evaluating the Companies as a whole. The fair market value of the stock of closely held corporations is frequently hard to determine because the shares, or blocks of shares, are usually not sold or transferred, and therefore, generally, no objective "market exists for the stock to use as a standard for comparison. Here, However, evidence was produced and this court found, that a 50 percent share of the Companies was sold by Mr. J.R. Burgett to Mr. and Mrs. George as recently as September 15, 1981, for $3,496,000. Judgment ¶76, at 16. This was an "arms-length" sale, on the open market, with apparently no compulsion on either side to buy or sell, with both parties having reasonable knowledge of relevant facts--precisely the hypothetical norm the

II. Reduced Value of Distribution Award

This Court has awarded Mrs. George $430,000 as a fair and equitable distribution of her interest in the property of the Webco Companies. Judgment ¶ 9, at 36; ¶ 3 m), at 43. Mrs. George is entitled to that sum now, at the execution of Judgment. This Court, apparently indepently and not pursuant to the parties' requests in their respective Proposed Findings of Fact

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footnote cont'd

I.R.S. (and this Court) would seek. It could hardly be more convenient and available. (We do not understand what significance the "new cost" to the Webco companies of this buy-out of Mr. Burgett's shares may have, if any, to a calculation of the value of the Companies. In every sale of this size, there are off-setting costs and savings, which may, in turn, be off-set by other considerations. Nevertheless, the value of the shares was, objectively, $3,496,000, not some discounted figure.)

The Court has cited its ignorance of the circumstances surrounding the sale, and the resulting debt placed on the Webco Companies for rejecting the Burgett sale as a measure of value of the Companies. Judgment not 8, at 298. However, the Court allows that

and Conclusions of Law, chose to distribute this sum to Mrs. George over 72 equal monthly payments instead of as one lump sum payment. In taking account of this extended pay-out, the Court has decreed that the monthly sums paid shall be adjusted for inflation. Judgment note 12, at 36; ¶ 3m) at 43. This procedure does not account for the lost opportunities for investment or purchase had Mrs. George received the entire sum immediately, as she is clearly entitled. (nor

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footnote cont'd

the sale price may be "high, low or accurate", and the difference between the actual purchase price as an estimate of the total value of the Companies (2 X $3,496,000 = $6,992,000), and the book value of the Companies (2 x $3,496,000 = $6,992,000), and the book value adopted by the Court ($1,464,451) is so striking, that one must seriously question the accuracy of book value as the true worth of these Companies. Even the idea of such Companies being valued at $1,464,451 seems discordant, where the gross sales for 1983 are $200 million, and the gross commissions are $8 million.

does it account for the value of the money to Webco and Mr. George over the extended period; (Mrs. George, not Webco should receive the interest.) Mrs. George, if she must accept the distribution over an extended period, should receive the sum, adjusted periodically for inflation, plus an additional amount at a standard investment rate-- in essence the reverse of a "reduction to present value"

To that end, Plaintiff respectfully requests this Court, pursuant to Rules 52(b) and 59(c), to allow her to

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footnote cont'd

Judgment 94, at 19. Book value seems particularly biased to a low estimate in companies, such as these, with a large sales staff in the field, and thus very low overhead per employee and necessarily, fewer physical assets.

Certainly, if one is forced to chose between the two bases for measure, the higher figure is the more logical, for that figure was established through an arms-length sale. Therefore, it being manifestly inequitable to value the Companies at book value, in the event this Court declines Plaintiff's request for a hearing, Plaintiff respectfully requests this Court to amend its Judgment to value the Companies at twice the value of the 1981 sale, or $6,992,000.

introduce further evidence as to an appropriate addition to the distribution awarded here, to account for her depreciated value of the sum over the six year period.

In the alternative, Plaintiff respectfully requests this Court to amend its Judgment pursuant to Rule 59(e), to increase the amount awarded the Plaintiff for her interest in the Webco Companies to reflect additional income for lost investment interest, over and above the upward adjustment for inflation.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that her Motion be GRANTED.*

Lawrence H. Wechsler, Esq.

Dated: January 30, 1984
Washington, D.C.

* Plaintiff specifically declines to waive, and specifically intends to preserve, any and all issues on appeal which she has or may have, notwithstanding the inclusion or absence of such issues herein.

APPENDIX V

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division
Domestic Relations Branch

FRANCOISE DU PAC DE MARSOULIES GEORGE,	)	
Plaintiff	)	
V.	)	Civil Action No. D 1068-82
CARL HEYMAR GEORGE,	)	
Defendant	)	

OPPOSITION TO MOTION TO AMEND

AND MAKE ADDITIONAL FINDINGS

OR, IN THE ALTERNATIVE, TO AMEND JUDGMENT

In opposing plaintiff's Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgment, defendant can make no response more apposite than the ruling of Judge Keech in denying a motion to reopen made after the court had submitted its proposed findings of fact and conclusions of law to counsel in Rue V. Feuz Const. Co., 103 F. Supp. 499, 502 (D.D.C. 1952):

"The principal contention of counsel for the garnishee is that the reopening of this case is within the discretion of the trial court, that such discretion should be exercised upon a substantial showing that an unjust and incorrect judgment is about to be entered, and that the three affidavits make such a showing.

"There is nothing to indicate that any of the parties whose testimony the garnishee now seeks to present to the court were at the time of the trial in any wise capable of appearing or beyond the reach of the garnishee. Indeed, the parties from whom additional evidence would be elicited are persons who are and have been readily available to the garnishee.

"There is no contention -- as there cannot be -- that the additional evidence is newly discovered.

"The garnishee's motion coming at this time and on the state of this record is, in effect, a motion for a new trial on the ground that an attorney who tries his case largely on one theory, without producing evidence then available to meet the other issues raised at the trial, should be permitted, after the court renders judgment against him, to reopen the case in order to put in his defanse to those issues which at the trial he deemed unworthy of refutation.

"The court concedes that under Rule 59(a) the court has discretion to reopen a case on a motion for a new trial for the taking of additional testimony. However, such discretion should be exercised only where the circumstances show justification for departure

> from the usual procedure. It is the view of this court that failure of a party to call available witnesses to meet issues raised at the trial, does not constitute justification for reopening a case after determination by the court. Public policy and the court calendar are such as not to permit a party litigant to gamble on reliance on one theory at the trial and, after a contrary view of the evidence is adopted by the court and is to be followed in its judgment on the facts of record, to seek to reopen the case to meet the other issues raised by that record, in an attempt to make for a finding in its favor on the theory adopted by the court." (Emphasis supplied.)

Plaintiff has classified her principal motion as one brought pursuant to Domestic Relations Rules 52(b) and 59(a), but only Rule 52(b) need be considered, for the reason that plaintiff has carefully crafted her motion so as not to move for a new trial. As a motion for a new trial is the sine qua non for the relief of opening the judgment entered herein, taking additional testimony, amending conclusions of law, making new conclusions, and directing the entry of a new judgment -- all forms of relief unique to Rule 59(a) -- plaintiff's principal motion can only be considered in the context of Rule 52(b),

which limits the reach of plaintiff's motion to the amendment of the court's findings of fact or the making of additional findings, and the amendment of the judgment accordingly.

Plaintiff's alternative motion to amend the judgment pursuant to Rule 59(e) is limited to a single point, to wit:

> "In the alternative, plaintiff respectfully requests this court to amend its judgment pursuant to Rule 59(e), to increase the amount awarded the Plaintiff for her interest in the Webco Companies to reflect additional income for lost investment interest, over and above the upward adjustment for inflation." (Plaintiff's P&A, p. 7.)

Plaintiff thus makes two claims in her motion. Her first claim is that she should be given "another bite at the apple" on the factual issue of the value of the George family Webco stockholdings. Review of the record and the Findings of Fact shows the following:

1. Plaintiff called defandant as a witness in her case in chief and examined him briefly on the amount of

money agreed to be paid to Mr. Burgett for his stock-holdings in the Webco companies. (R 15-17.)

2. Plaintiff offered no independent evidence of stock values in her case in chief.

3. Defendant introduced voluminous evidence of stock values in his case in chief.

4. Plaintiff cross-examined defendant on his testimony as to stock values. (R 1346-1373-1377; 1380/A1380/B.)

5. Plaintiff offered no evidence of stock values in rebuttal.

6. In valuing the stock, the court's Finding of Fact embraced defendant's unrebutted testimony of book value (Findings of Fact, ¶ D.1, at 29), which was the highest of the three valuations testified to by defendant. (R. 1241, 1258, 1272).

Plaintiff's first claim is nothing more than her specious reiteration that because the gross amount of money to be paid to Mr. Burgett over ten years, inclusive of interest of approximately $756,000 and disregarding

offsetting savings of $1,053,000, equals $3,496,000, this gross amount should be extrapolated to arrive at the value of the stock. This position, absurd on its face, is of course wholly unsupported by the record. To sustain it would not only compromise public policy and the court calendar, but would substitute fancy for fact and thereby make a mockery of the adjudicative process.

The present situation in which plaintiff finds herself is of her own making, as a result of the theory she adopted at trial, i.e., seeking in-kind distribution of the Webco stock, and her failure to offer independent evidence of stock value. As the court held in Rue v. Feuz Const. co, supra, ". . . failure of a party to call available witnesses to meet issues raised at trial, does not constitute justification for reopening a case after determination by the court." In its Findings of Fact in the instant case, the court said:

> "The plaintiff sought in-kind distribution of the stock and did not offer evidence as to its

> fair value. Under modern rules of pleading, the plaintiff could have prayed for alternative relief, i.e., in-kind distribution or the cash equivalent of a portion of the stock. Consistent with alternative pleading, plaintiff could have put on expert stesimony about the value of the stock in its case-in chief. Even under the manner in which plaintiff did proceed, it could have offered expert testimony in rebuttal. Without such testimony, the court rules as the record reflects." (Footnote 8, at 29-30).

Citing Rue v. Feuz Const. Co., supra, the United States Court of Appeals for the District of Columbia said in Grumman Aircraft Engineering Corp. v. Renogotiation Board, 482 F2d 710, 157 U.S. App.D.C. 121 (D.C.Cir. 1973), cert. granted, 94 S.Ct. 2602, 417 U.S. 907, 41 L. Ed.2d 211, rev'd on other grounds, 95 S.Ct. 1491, 421 U.S. 168, 44 L.Ed2d 57, when upholding the District Court's denial of the Government's motion for rehearing:

> "Ordinarily, Rule 59 motions for either a new trial or a rehearing are not granted by the District Court where they are used by a losing party to request the trial judge to reopen proceedings in order to consider a new defensive theory which could have been raised during the original proceedings." 482 F.2d at 721.

See also, Murnane v. American Airlines, Inc., 482 F. Supp. 135, (D.D.C. 1979), where in the court stated, at page 152: "Under Rule 59, Fed.R.CivP., it is unmistakably clear that rehearings are not to be granted solely to permit the losing party to present arguments or theories which could and should have been presented at trial, but were not."

Plaintiff's only other claim is that, pursuant to her principal motion or her alternative motion, she should receive not only the valuable assets distributed to her, the large cash distribution awarded, the handsome monthly support payments, and approximately half her counsel fees; in addition she wants what amounts to "interest on her money." In advancing this claim she loses sight of the nature of the cash distribution ordered made to her: This is not a contractual obligation but an equitable distribution. Defendant is not earning "interest on his money" as a function of the distribution of the Webco stock to him, and the court manifestly tailored the payment of plaintiff's cash distribution so as

to coordinate it with other salient facets of the necessarily complex judgment rendered, while giving plaintiff protection against inflationary erosion of her award by CPI indexing.

* * * * *

Plaintiff grounds her dilatory attack on the book value of the Webco stock as a fair measure of its value, by referencing Internal Revenue Service Revenue Ruling 59-60 as indicating that book value is only one of a set of factors to be considered.

In determining the valuation of the George family stockholdings in the Webco companies, the court reviewed the considerable testimony in evidence regarding different methods by which those family stockholdings could be valued. The methods of valuation upon which evidence was offered included an analysis of the book value of the George family holdings, and an

analysis of the cost to the companies of buying out Mr. Burgett. Based on the evidence offered to it, the court found the book value of the George family stockholdings in the Webco companies to be the most accurate valuation of the stock's worth. (Findings of Fact, D. 1. at 29)

The first sentence of Section 1 of Revenue Ruling 59-60 states:

> "The purpose of this Revenue Ruling is to outline and review in general the approach, methods and factors to be considered in valuing shares of the capital stock of closely held corporations for estate tax and gift tax purposes. (Emphasis supplied.)

Thus, by its own statement of purpose, the Ruling is limited to valuation of stock for tax purposes. This court was not required to consider all the approaches, methods and factors set forth in Revenue Ruling 59-60, in order to arrive at a determination of the value of the George family stockholdings in the Webco companies. However, plaintiff was free to introduce testimony, via expert witnesses or otherwise, with regard to any or all

of the approaches, methods and factors set forth in Revenue Ruling 59-60, just as defandant introduced evidence as to different methods by which the George family stockholdings in the Webco companies could be valued. Plaintiff sought in-kind distribution of the stock, and chose not to offer evidence as to its fair market value. Plaintiff cannot be heard, at this point in the proceedings, to complain that the judgment should be amended to increase the value of the George family stockholdings in the Webco Companies because plaintiff chose, at trial, not to offer evidence as to such value, including any evidence on approaches, methods, or factors used by the Internal Revenue Service in valuing stock of closely held corporations for estate and gift tax purposes.

Plaintiff attempts to analogize the instant case to duPont v. United States, 385 F. 2d 780 (3rd Cir. 1967). However, the significant circumstance in duPont, and the reason that it is inapposite in the instant matter, is

that in duPont, the Court of Appeals ruled that the District Court should have granted plaintiffs' application to open the judgment and take additional testimony because plaintiffs' evidence given at trial, received as competent, was declared post-trial to be legally defective. The Court of Appeals held that if the plaintiff's expert testimony "was insufficient as a matter of law in proof of market value because it was based on an erroneous premise, it was legally incompetent and should have been excluded, or having been received should have been stricken" during the course of the trial, and that because of the post-trial rejection of the evidence on the grounds of incompetency, the plaintiffs

> "were thus deprived of the opportunity to supply the deficiency which they would have had if the evidence had been stricken during the course of the trial. In these circumstances, therefore, after the court rejected Patterson's testimony, plaintiffs were entitled to an opportunity to offer additional evidence either by further explanation by Patterson or by other witnesses to supply the want of evidence which the court had declared exists." 385 F.2d at 784.

"In the instant case, as was the situation in Rue v. Feuz Const. Co., supra, plaintiff was never deprived of her opportunity to present evidence on market value at trial. On the contrary, given full opportunity at trial, plaintiff elected to offer no evidence on the question of market value. Thus duPont is wholly inapposite here.

William B. Wolf, Fr. #014191
Wolf & Wolf
1001 Connecticut Avenue
Suite 1210
Washington, D.C. 20036
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Opposition to Motion to Amend and Make Additional Findings or in the Alternative, to Amend Judgment and proposed Order were mailed by first class mail, postage prepaid, to Lawrence H. Wechsler, Esquire, 1801 K. Stree, N.W., Washington, D.C. 20006, attorney for plaintiff, this _____ day of February, 1984.

_____

William B. Wolf, Jr.

APPENDIX VI

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division
Domestic Relations Branch

FRANCOISE DU PAC DE MARSOULIES GEORGE,	)	
Plaintiff	)	
V.	)	Civil Action
	)	No. D 1068-82
CARL HEYMAR GEORGE,	)	
Defendant	)	

PLAINTIFF'S REPLY MEMORANDUM

IN SUPPORT OF HER MOTION TO AMEND

AND MAKE ADDITIONAL FINDINGS OR, IN

THE ALTERNATIVE, TO AMEND JUDGEMENT

The Defendant in this suit for divorce has opposed the Motion by the Plaintiff to Amend and Make Additional Findings on the ground that Plaintiff had ample opportunity to introduce evidence as to the value of the Webco stock at trial, and, since she did not, she

should not now be allowed to re-open the trial to do so; in other words, Defendant contends that Plaintiff should not be allowed "another bite at the apple."

While undersigned counsel is well aware of the need for finality of judgments in our Courts, and while it may be that Plaintiff's prior counsel should have introduced evidence on stock value at trial, one cannot lose sight of the fundamental point we are trying to make, which is: this is a suit in equity which seeks to determine the relative rights of two parties-- a husband and a wife-- to property of considerable value, and the decision this Court makes may very well represent the last practical opportunity the parties will have to fairly divide their assets acquired over 37 years-- the bulk of their lifetimes. The Plaintiff, Mrs. George, will have no further real source of income for the remainder of her life, and must depend on the fairly and equitably distributed assets among the parties. It is simply our wish to provide the Court with relevant information so

that it will have the wherewithal to do so. In this light, arguments about "two bites at the apple" lose their significance, for they are really beside the point.

For this reason also, the case on which the Defendant relies, Rue v. Feuz Construction Co., 103 F. Supp. 499 (D.D.C. 1952), should not be applied here. That was an action at law, not equity, involving a dispute between a bank and a construction company over the certainty of the sum one owed to the other. It is a basic tenet of the law of equity that, "when necessary to prevent a wrong or do a right, courts in order to do equity will look through the shadow to the substance." U.S. ex rel. Girard Trust Co. v. Helvering, 66 App. D.C. 64, 85 F. 2d 230, 234, (1936), aff'd, 301 U.S. 540 (1937); accord, Douglass v. First National Realty Corporation, 351 F. Supp. 1142, 1147 (D.D.C. 1972), vacated in part and remanded, 164 U.S. App. D.C. 368, 505 F. 2d 475 (1974).

Defendant also states in opposition to Plaintiff's Motion that even though Plaintiff offered no evidence as

to the Webco companies' value, "the Court found the book value of the George family stockholdings in the Webco companies to be the most accurate valuation of the stock's worth." While the Court did indeed state this, it seems apparent, if not certain, from footnote 8 of the Judgment, at 29, that the Court was uneasy with being forced to rule without sufficient evidence. As we have argued in our previously filed Motion papers, book value is rarely, if ever, an accurate evaluation of the fair market value of a going concern, and it is the fair market value of the Webco Companies' stock which must be determined in order for a fair distribution. Consequently, Defendant's protests about the abundance of evidence on book value presented at trial is simply not material.

WHEREFORE, in the interests of equity and justice, Plaintiff again respectfully requests this Court for an opportunity to supply the evidence for which this Court has already expressed a need so that the Court

will be able to make an informed judgment as to the fair market value of the Webco stock.

Dated: February 16, 1984
Washington, D.C.

Respectfully submitted,

Janis, Schuelke & Wechsler

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Counsel for Plaintiff

APPENDIX VII

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Family Division
Domestic Relations Branch

FRANCOISE DU PAC DE MARSOULIES GEORGE,	)	
Plaintiff	)	
V.	)	Civil Action No. D 1068-82
CARL HEYMAR GEORGE,	)	
Defendant	)	

Upon consideration of plaintiff's Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgment, and her Points and Authorities in support thereof, defendant's Opposition thereto, and the record herein, it is, by this Court, this 15th day of February, 1984

ORDERED, that plaintiff's Motion to Amend and Make Additional Findings or, in the Alternative, to Amend Judgment be, and it is hereby, denied.

BRUCE S. Mencher, Judge

Copies to:
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Washington, D.C. 20036

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Washington, D.C. 20036

APPENDIX VIII

QUOTATIONS FROM JUDGEMENT

1. P. 31 (E) The husband stopped providing the wife with support payments in November 1982. . . the Court still would not have applauded his decision to cut off support entirely. Notwithstanding, the Court finds . . . her request for pendente lite support should be denied.
P. 35 (8) Mrs. George's request for pendente lite support is denied. Moreover, realistically, we did not have . . . despite the husband's termination of support in 1982, a needy spouse ready to become a public charge . . .

2. P. 30 (2c) The wife has already brought two stockholder suits against Mr. George in another jurisdiction.
P. 14 (60) . . . Further, the defendant testified that he considered "All shares in all the Webco companies, as our shares" and equally owned between himself and his wife.

1/ Mr. Roy Thomas (President of Webco U.S.A.) a witness called by the defendant, substantiated this.

P. 17 (78) In January, 1982, Mr. George transferred 167 shares (of Mrs. George's 500 shares) of Webco Vaduz to his son, Kenneth George.

P. 28 (f) The plaintiff and defendant have just about equally contributed to the acquisition, preservation, appreciation and value of the assets subject to distribution. Thus all assets, including the Webco stock, should be equitably distributed.

P. 28(6) . . . Mr. George will be the one with the opportunity to earn future income and acquire future assets, by virtue of his unfettered ownership and control of Webco.

3. P. 28 (e) Mr. Thomas testified to Webco's corporate policy of lending money to its chief executives and that these loans were part of the overall compensation package which Webco provides its chief executives.

P. 28 (f) He (Mr. George) testified to a pattern of borrowing money from Webco, repaying it at the close of the year. and reborrowing at the beginning of the new year. This practice is followed solely to be in literal compliance with the IRS Code.

P. 23 (10) The husband has a liability (?) of $250,000 in loans, both long term and short term, from the Webco companies.

P. 28 (d) It was undisputed that Mr. George has the power to increase his salary at any time, the power to declare dividends, and the power to borrow money from the Webco companies.

P. 15 (74) In July, 1981, the husband sent his shares of Phileas Fogg, Inc. stock . . . to be placed in a trust which his son, Kenneth, controls.

P. 20 (8) The husband has $108,000 in cash being held for him by his son, Kenneth.

P. 18 (88) . . . $100,000 of Mr. George's salary will be paid by Webco directly to Kenneth (as salary).

P. 17 (81) Mr. George, during this period, borrowed another $130,000 from his son Kenneth.

In 1981, Mr. George borrowed $200,000 from his son Kenneth.

In 1981, Mr. George transferred 167 shares of Webco Vaduz to his son Kenneth George.

In March, 1982, Mr. George acquired a house . . . borrowing another $200,000 from his son Kenneth.

P. 38 (h) To the husband, all cash in banks and in the hands of Kenneth George.

P. 40 (i) Husband's obligation to pay the insurance premiums to Massachusetts Life Insurance Company on ($150,000) Policy # 3-845-010 for the remainder of Mrs. George's natural life. (To cover alimony of $3,500 per month and payment for 30% of Webco shares'.)

APPENDIX IX

QUOTATIONS FROM "WOMEN AND DIVORCE"

NEW YORK MAGAZINE

dated 8 October, 1984

3. "Without question, women are discriminated against in divorce court. So concluded an extensive study on sex bias in the courts that was published last fall by the New Jersey Supreme Court."

4. "This past May, New York Chief Judge Lawrence Cooke appointed a 23-member panel to investigate similiar claims about the New York State judiciary. The New Jersey study, based on U.S. Census reports and other reliable data, confirmed on a statewide scale statistics about the economic con-

sequences of divorce that many experts think apply nationwide."

5. Judith Avner, formerly of the NOW Legal Defense and Education Fund " There certainly was a clear intent by the Legislature to change inequities that existed under the old system . . . the problem is that although the law has changed, judges have not."

6. "Thirty-nine percent of all female-headed households are below the poverty level. (Only 7 percent of families with two parents are classified as 'poor'.) Thirty percent of these women have never been married, but almost 46 percent are divorced. A 1981 report by the National Advisory Council to President Reagan projected a grim future for women if this situation persists: 'All other things

APPENDIX IX (CONT.)

being equal, if the proportion of the poor in female-householder families were to continue to increase at the same rate as it did from 1967 to 1978, the poverty population would be composed solely of women and their children before the year 2000."

CONCLUSION

Petitioner knows she is luckier than most: she is not poor; but rich or poor, she has the right to enjoy her fair share of the parties' property. Moreover, should the judgement be upheld, it will severely curtail her life-style, continue to encroach on her capital and keep her forever in Respondent's unfettered control.